UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

Milwaukee, WI

BOB COOPER GLASS & MIRROR COMPANY, INC.

Employer

and

JOE CLEMENTI **Case 30-RD-1494**

Petitioner

and

GLAZIERS LOCAL UNION NO. 941 OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL NO. 7, AFL-CIO

Union

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION[1]

I. INTRODUCTION

The Employer performs glass fabrication and installation for new commercial and residential construction out of its Madison, Wisconsin facility. The Employer currently employs

[1] Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended ("Act"), a hearing was held before a hearing officer of the National Labor Relations Board ("Board"). The initial hearing occurred on May 5, 2008. On May 16, 2008, the undersigned issued a Decision and Direction of Election. On May 29, 2008, the Union filed a Request for Review, which the undersigned treated as a motion for reconsideration and, on June 4, 2008, issued an Order Granting Union's Motion for Reconsideration, Cancelling Election and Remanding Case for Further Hearing. On June 10, 2008, the undersigned issued an Order Reopening Hearing and Notice of Hearing. On June 11, 2008, the Union filed a Motion to Cancel Hearing and Dismiss Petition. On June 12, 2008, the undersigned issued an Order to Show Cause to which all parties responded. The hearing reopened on June 19, 2008. The record consists of the transcripts and exhibits from both hearings. The Union contends the Region only may consider the evidence from the initial hearing, but not the remanded hearing, in determining the issue of unit definition, and the evidence from the remanded hearing only may be considered in deciding the issue of voter eligibility. I conclude that all of the evidence in the record shall be considered in deciding the issues presented by the petition. For the reasons set forth in this Supplemental Decision, I also am denying the Union's Motion to Dismiss Petition.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned finds as follows: (1) The hearing officer's rulings are free from prejudicial error and are hereby affirmed; (2) The Employer is engaged in interstate commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein; (3) The Union is a labor organization within the meaning of the Act; (4) The Union is the collective bargaining representative for the units described herein; and (5) A timely brief from the Union has been received and considered following the remanded hearing.

six statutory employees: two glass workers who primarily fabricate materials (e.g., glass storefronts, entrances, shower doors, mirrors, etc.) at the Employer's facility; and four journeyman glaziers who primarily install the fabricated materials out at the jobsites.

The Union represents all six of these employees. There are two separate bargaining units, and each unit is covered by its own agreement. Those two agreements are referred to as the Madison Glassworkers Agreement and the Madison Glaziers Working Agreement.

On April 1, 2008, the Petitioner filed a petition to decertify the Union as the representative of the two glass workers who fabricate materials at the Employer's facility. The parties have since stipulated that, for the purposes of the petition, the appropriate unit, within the meaning of Section 9(b) of the Act, is as follows (hereinafter "Unit"):

> Those employees of the Employer working in the glass handling and fabrication departments, metal fabricators and assemblers, auto glass installers, and packing departments, all shop glazing, new and old sash, metal and plastic panels, shower doors, tub enclosures, insulated units, and truck drivers; excluding warehouse superintendents, janitors, watchmen, maintenance employees, guards and supervisors as defined in the Act.[2]

The sole issue is who is part of this Unit and, therefore, eligible to vote in the decertification election.[3] The Petitioner and Employer each contend the Unit consists of two glass worker employees (Joe Clementi and Daniel Christensen) who spend almost all their time fabricating materials at the Employer's facility. The Union, in contrast, contends the Unit also includes the four journeymen glaziers (Kevin Smith, Todd Ryan, Dale Belke, and Anthony

[2] The parties also stipulated that there is another, separate and appropriate bargaining unit described in the Madison Glaziers Working Agreement.

[3] The Union initially argued Jason Bambrough also should be included in the Unit and eligible to vote because he performs work at the Employer's facility and out in the field. In the original Decision and Direction of Election, Jason Bambrough was found not to be eligible to vote in the election because: (1) he has a small ownership interest in the Employer; and (2) he is the son of one of the other two owners, Ronald Bambrough. See 29 U.S.C 152 (3) (statutory definition of "employee" excludes individuals "employed by his parent or spouse"); see also *Union Manufacturing Company*, 291 NLRB 436 (1988). The Union did not include the issue of Jason Bambrough's status as part of its Request for Review, and it was not a subject of the remanded hearing.

Brendemihl) because they perform some Unit work in addition to the work they perform under the Madison Glaziers Working Agreement. The Union contends that because the Unit is defined based on the work performed, and there are no quantitative requirements as to the amount of work that need be performed, the performance of any Unit work by each of these four journeymen glaziers means they are part of the Unit and, therefore, eligible to vote in the election. The Petitioner and the Employer contend these four journeyman glaziers are not eligible to vote because they are only part of the unit described in the Madison Glaziers Working Agreement.

Based upon my review of the record, I conclude the four journeyman glaziers (Kevin Smith, Todd Ryan, Dale Belke, and Anthony Brendemihl) are not part of the Unit and, therefore, are ineligible to vote in the decertification election. I conclude the Board's dual-function analysis applies, and none of the four journeymen glaziers performs Unit work for sufficient periods of time to demonstrate that he has a substantial interest in the Unit's wages, hours, and conditions of employment. I also find there is no basis to disturb the parties' established history of treating the two bargaining units as separate, appropriate units. As such, I direct an election in the Unit to determine if the employees (currently Daniel Christensen and Joe Clementi) want the Union to continue as their collective bargaining representative.

II. FACTUAL SUMMARY

As previously stated, the parties historically have maintained two separate bargaining units, covered by separate collective bargaining agreements. The terms and conditions of employment for the employees working in the Employer's shop are set forth in the Madison Glassworkers Agreement. The terms and conditions of employment for the employees working out in the field are set forth in the Madison Glazier's Working Agreement.

The "Recognition" provision in the Madison Glassworkers Agreement is, in relevant part, as follows:

> The [E]mployer recognizes, acknowledges and agrees that Painters and Allied Trades, District Council No. 7, AFL-CIO and its affiliate, Glaziers, Architectural Metal Workers and the Glass Workers Union Local 941 is within the meaning of Section 9(a) of the National Labor Relations Act, the exclusive bargaining representative for all employees performing work covered by this Agreement. The Union is hereby recognized as the sole collective bargaining agent for those employees of the company working in the glass handling and fabrication departments, metal fabricators and assemblers, auto glass installers, and packing departments, all shop glazing, new and old sash, metal and plastic panels, shower doors, tub enclosures, insulated units, and truck drivers. Specifically, warehouse superintendents, janitors, watchmen, and maintenance workers are not included in this agreement.

The "Recognition & Jurisdiction" provision in the Madison Glaziers Working Agreement is as follows:

> On any contract work accepted by the Employer in connection with construction jobs within the territorial jurisdiction of Local 941, which obligates the Employer to provide job site installation labor, the Employer agrees the Union shall have sole jurisdiction over the fabrication, installation, and fastening into all types of materials of the following shall be done by Glaziers. This work includes but is not limited to all types of the following: (1) glass and glass substitutes used in place of glass, pre-glazed windows, retrofit window systems, mirrors, curtain wall systems, window wall systems, pilkington systems, suspended glazing systems, louvers, skylights, entranceway systems including revolving and automatic door systems, patio doors, store front systems including the installation of all metals, column covers, panels and panel systems, shower doors, bronze or stainless steel materials used in facing, glass hand rail systems, decorative metals as part of the glazing system, and the sealing of all architectural metal and glass systems for weatherproofing and structural reasons. Also the installation of any and all other work or material recognized by the glazing industry as glazers work, including driving of glazing installation trucks, and operation of all equipment complimentary and necessary to this trade.[4]

[4] The term "installation" is defined under the Madison Glaziers Working Agreement "as carrying metals from the truck to the opening and putting the material in place. Materials, however, may be delivered and placed in designated storage areas by Glassworker Union members."

Under each of these agreements, the employees receive an hourly wage plus an hourly contribution to the Union's Health & Welfare Fund and to the Union's Apprenticeship Fund.[5] The current total wage and benefit package under the Madison Glassworkers Agreement is around $28.00 an hour, and the current total wage and benefit package under the Madison Glaziers Working Agreement is around $41.00 an hour. In addition to their hourly wage and benefits, the employees covered under the Madison Glassworkers Agreement also receive holiday pay, vacation pay, and personal days. In contrast, the employees covered under the Madison Glaziers Working Agreement do not.[6]

An employee working under the Madison Glassworkers Agreement can perform work out in the field as a "Glazier Assist" as long as all journeyman glaziers and apprentices are being employed. This is addressed in Article VII ("Wage Classifications"), Section D, and in Article XXIII of the Madison Glassworkers Agreement, and in Article XXIII, B of the Madison Glaziers Working Agreement. Both agreements state that a "Glassworker union member performing Glazer Assist-Classification II work shall be paid at least $2.00 per hour over their present total package."[7] As for the frequency of this happening, Daniel Christensen, who is one of two glass workers in the shop, testified without contradiction that there have "only [been] a couple of times" during his three years of employment that he has gone out into the field to assist the journeyman glaziers.

[5] Employees under both agreements receive the same hourly contribution to the Union's Health and Welfare Fund, but different hourly contributions made to the Union's Apprenticeship Fund. The contribution under the Madison Glassworkers Agreement is $.10 per hour. The contribution under the Madison Glaziers Working Agreement is $.20 per hour. If a glass worker performs work described in the Madison Glaziers Working Agreement, that employee still will receive the $.10 per hour contribution while performing that work.

[6] If glaziers perform Unit work, they do not become eligible for holiday or vacation pay or personal days.

[7] Under the Madison Glassworkers Agreement, a Glazier Assist-Classification I is a Glassworker Union member who, without the supervision of a journeyman glazier, is qualified, willing, able and has the required tools to perform the job. A Glazier Assist-Classification II is a Glassworker Union member who, with the supervision of a journeyman glazier, is qualified, willing, able and has the required hand tools to perform the job.

Conversely, Article VII, A of the Madison Glaziers Working Agreement states "All glazing and metal fabrication performed in the shop may be performed by glaziers or glassworkers at the discretion of the Employer at the employee's normal rate of pay. Metal fabrication and assembly on the job shall be the work of the glaziers." The record reflects that there have been instances in which a glazier will come into the Employer's shop and perform cutting, drilling, or other fabrication work typically performed by one of the Employer's glass workers. As for frequency, Christensen testified he has seen glaziers "helping out … on any of [his] work" maybe once every three to six months. Another employee, Todd Ryan, who is a glazier, testified that he will come and perform work in the shop maybe once a month for about an hour or so. The example Ryan gave was that he spent 2 hours a month or so ago fabricating a shower door in the Employer's shop. Ron Bambrough, one of the owners, estimated that during the Employer's slower months (which are "a couple months" out of the year), glaziers would spend up to one hour, one to two days per week, working in the Employer's shop.

There is no dispute that the Employer's four journeymen glaziers routinely load (and occasionally unload) their installation trucks at the Employer's facility to use while out at the jobsites. The witnesses who testified on this point (Ron Bambrough and Todd Ryan) estimated that the four journeymen glaziers spend 10 to 40 minutes every morning (of their eight-hour shift) loading their trucks before going out to a jobsite. On an infrequent basis, probably once every couple of weeks, these four journeymen glaziers will spend approximately 10 minutes unloading their installation trucks (disposing of used materials) typically at the end of their shift. This primarily occurs when the glaziers are tearing out or demolishing, and have some material to discard when they return to the Employer's facility. On certain days, the journeymen glaziers will work at more than one jobsite, and they will have to load their trucks, travel to the next

jobsite, and unload their trucks. This loading and unloading can take approximately five to 20 minutes each.[8]

The parties have negotiated separate agreements for at least the last 38 years. In the past, prior to the expiration of the agreements, the Union has sent a letter to the Employer, citing the relevant reopener provisions in each agreement, and requesting to meet and commence bargaining. The parties then will meet and negotiate the agreements. In the past, there have been glass workers and glaziers present, along with a Union representative, during these negotiations. Ron Bambrough, who has participated in contract negotiations with the Union since 1986, described the negotiations as follows:

> We do sit down and talk about [the two contracts] at the same time. We address—typically we address the Glaziers contract first, talk about language, and then maybe we get down to wages and then we go on to the Glassworkers contract and discuss that separately, again with the language and then wage classifications or wages.

Once the parties reach an agreement, the employees in the respective units then vote on whether to ratify their agreement. The glass workers vote on whether to ratify the Madison Glassworkers Agreement, but do not vote on whether to ratify the Madison Glaziers Working Agreement. Similarly, the glaziers working out in the field vote on whether to ratify on the Madison Glaziers Working Agreement, but do not vote on whether to ratify the Madison Glassworkers Agreement.

III. ANALYSIS

The Union contends that since the Unit is defined based on the work performed--and there are no quantitative requirements as to the amount of work that need be performed to be in the Unit--the journeymen glaziers' performance of *any* Unit work is sufficient for their inclusion

[8] There also are instances, which occur several times a week, where the glass workers will drive materials or frames from the Employer's facility out to a jobsite.

in the Unit, irrespective of their community of interest or status as dual-function employees. The Union further contends that even if the Board applied a community of interest or dual-function analysis, such analysis would result in the inclusion of these four journeyman glaziers in the Unit, making them each eligible to vote in the election. The Petitioner and the Employer contend that the four journeyman glaziers are only part of the unit described in the Madison Glaziers Working Agreement and, therefore, not eligible to vote in the election.

The Union asserts, based upon the language in the "Recognition" provision of the Madison Glassworkers Agreement, that since the Unit is defined based on the work performed, and there are no quantitative requirements as to the amount of work that need be performed in order to be part of the Unit, an employee who performs any Unit work is part of the Unit. The Union cites no relevant Board authority to support this contention, however.

When, as is the case here, there are employees who perform bargaining unit work in addition to work that is outside of the bargaining unit, a dual-function analysis is used to determine if the employees should be treated as part of the bargaining unit and eligible to vote in an election. The dual-function analysis is a variant of the Board's traditional community-of-interest test. See *Berea Publishing Co.*, 140 NLRB 516, 519 (1963). The touchstone of dual-function employee status is the fact that a single employee performs multiple job functions covered by one or more of the employer's job classifications, or, in this case, covered by one or more of the collective-bargaining agreements.

The Union claims the dual-function analysis does not apply because, as stated, based upon the "Recognition" provision in the Madison Glassworkers Agreement, an employee is part of the Unit if he/she performs any Unit work, regardless of the amount. The Union, however,

does argue that even if the dual-function analysis applies, the four glaziers at issue perform sufficient Unit work to qualify. I reject both arguments.

In *Harold J. Becker Co.*, 343 NLRB 51 (2004), the Board applied a dual-function analysis to determine whether the challenged employees were eligible to vote in a unit defined by the work performed. Although the employees at issue in that case fell within expressly excluded classifications, the stipulated bargaining unit included "[a]ll employees of the Employer engaged in sheet metal work," and the disputed employees performed some amount of sheet metal work. *Id.* The Board, therefore, concluded it was appropriate to apply a dual-function analysis to determine whether the employees in question performed sufficient unit work to warrant inclusion in the unit.[9]

The test for whether a dual-function employee should be included in a unit is whether the employee performs unit work for sufficient periods of time to demonstrate that he/she has a substantial community of interest in the unit's wages, hours, and conditions of employment. See *Berea Publishing Co.*, *supra* at 518-519; see also *Continental Cablevision*, 298 NLRB 973 (1990); *Alpha School Bus Co.*, 287 NLRB 698 (1987); and *Oxford Chemicals*, 286 NLRB 187 (1987). The Board has no bright-line rule as to the amount of time required to be spent performing unit work but rather makes this determination according to the facts of each case. See, e.g., *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 820 (2003) (driver averaging nine hours a week from his hire date to date of election was sufficient to warrant inclusion); *Martin Enterprises, Inc.*, 325 NLRB 714, 715 (1998) (operator who spent at most ten percent of his time working with operators was not eligible as a dual-function employee); *Oxford Chemicals*, *supra*

[9] The Board's holding in *Harold J Becker Co.* undermines the Union's claim that because glaziers are not specifically excluded from the Unit description, it must be concluded that the parties intended for them to be included, because in *Harold J Becker Co.* the employees at issue held positions that were specifically excluded and the Board still examined their eligibility based on the bargaining unit work they performed.

(employee who regularly performed unit work for twenty-five percent of each day was included in the unit); and *Mc-Mor-Han Trucking Co.*, 166 NLRB 700, 702 (1967) (employee who drove truck on twenty days during the year with no regularity, pattern, or consistent schedule, was excluded from unit of truck drivers). The Union acknowledges in its brief that generally employees who perform unit work 25 percent of the time qualify as dual-function employees.

The Union asserts the Unit work performed by the four journeymen glaziers consists of occasional cutting, drilling, or other fabrication work at the Employer's facility, the loading and unloading of the installation trucks at the Employer's facility, the driving of the installation trucks, and the loading and unloading of the installation trucks at the jobsites.

As for the cutting, drilling and other fabrication work at the Employer's facility, the highest estimate in the record is that, on average, each glazier will spend approximately two hours a month performing these tasks. They typically will perform this occasional work at the Employer's shop during the "couple of months" during the year when work is slow (one-to-two hours a week during these slow months), or near the end of their shift when they come back early from a jobsite and want to get their full eight hours in for the day. There is no dispute this is Unit work and should be included in determining whether the glaziers who perform this work qualify as dual-function employees.

As for the loading and unloading of the trucks while at the Employer's facility, the "Recognition" provision of the Madison Glassworkers Agreement does not define this as Unit work, but it appears that prior to the 1980s, the glass workers at the Employer's facility did the loading and unloading of trucks at the Employer's facility, and it was considered by the witnesses at the hearing to be Unit

work.[10] The estimates in the record are the four journeymen glaziers each spend between 10 to 40 minutes every day loading their trucks at the Employer's facility before traveling to the jobsites, and spend 10 minutes "once every couple weeks" unloading their trucks (to dispose of materials) at the Employer's facility.[11] Based upon these estimates, the glaziers spend at most 40 minutes a day out of their (8 hours x 60 minutes an hour) 480 minute work day (if no overtime) loading and unloading trucks at the Employer's facility, which is 8.3 percent of their work day.

The Union, however, argues the time these glaziers spend driving the installation trucks, as well as the time they spend loading and unloading their installation trucks when they work at multiple jobsites on the same day, should be included in determining whether they qualify as dual-function employees.[12] I conclude that the evidence does not establish that these tasks are considered to be Unit work.

As for the driving of the installation trucks, the "Recognition and Jurisdiction" language in the Madison Glaziers Working Agreement includes "the installation of any and all other work or material recognized by the glazing industry as glaziers work, including driving of glazing installation trucks, and operations of all equipment complementary and necessary to this trade." The Union contends in its brief that the parties have mutually agreed not to enforce that provision, as shown by the fact that the Union has not, and does not plan to grieve the

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[10] Ron Bambrough testified as follows as to why the glaziers now load the installation trucks at the start of their shifts, rather than the glassworkers:

> It used to be that the glassworkers would load them, and then what we typically found was the glassworkers would forget to load something or whatever and so we'd end up running it out to the glaziers anyway. And it's also been our contention that when the glazier starts loading a truck he already start -- his mindset is on that job. Say he's loading up a doorframe, okay? He knows he needs a door and he needs the frame and he needs -- "Oh, I'm gonna need a closer" or "I'm gonna need a piece of glass," "I'm gonna need a door sweep." So his mindset gets involved in the job right from starting to load the truck.

[11] The Employer does not keep records that would more accurately reflect the exact amount of time each glazier spends loading and unloading these installation trucks at the Employer's facility.

[12] The Union solicited testimony from Todd Ryan concerning the amount of time he spends driving between the Employer's facility and jobsite, and between jobsites if there are multiple jobsites, as well as the amount of time he spends loading and unloading his installation truck when he performs work at multiple jobsites on the same day.

Employer's use of glassworkers to drive installation trucks. As such, the Union argues that it is now Unit work.[13] I reject the Union's claim. It is undisputed that there is some overlap between duties that are performed between the two units, but the fact that employees covered under the Madison Glassworkers Agreement can and do operate the Employer's installation trucks--without the filing of grievances--does not mean that it is now Unit work.[14] For these reasons, I conclude the driving of the installation truck is glazier work, not Unit work, which sometimes is performed by Unit employees.[15]

As for the loading and unloading of the trucks out at the jobsites, the "Recognition" language in the Madison Glassworkers Agreement is silent as to whether this particular work is Unit work, and the evidence on the issue was limited to Todd Ryan's testimony that he personally did not expect that a glassworker would come out from the Employer's facility to load

[13] At the resumption of the hearing, the Union called Joel Allen, the Union representative, to testify and he testified as follows on direct examination about the trucks:

> Q What is a glazing installation truck?
> A It's a truck that you use. It's used to carry glass and material and tools to a jobsite.
> Q How is that different from a normal truck?
> A A normal truck would be, say, a box truck or a pickup truck, something like that, although the glazing trucks can be used -- let me take a step back.
> A normal truck would be used primarily for delivery purposes. A glazing truck would be primarily to get specific materials to a jobsite to -- for installation; however, a glazing truck can be used as a delivery truck.
> Q Okay. I'm going to show you [the Madison Glaziers Working Agreement], and read Article 1, section (b) ["Recognition and Jurisdiction" provision] to yourself.
> Q And tell me when you're done.
> (Pause.)
> A Okay.
> Q And under that language is the work of driving a jobsite installation truck to the jobsite the exclusive work of the glaziers?
> A Reading this language, yes.

[14] If this analysis were true, the fact that the glaziers almost exclusively perform the loading and unloading of their installation trucks at the Employer's shop without objection from the Union means that such work is no longer Unit work and, therefore, should not be considered in the dual-function analysis.

[15] Article 15 of the Madison Glassworkers Agreement sets forth a requirement that covered employees have a valid driver's license. There is no parallel requirement under the Madison Glaziers Working Agreement. The Union argues there is no such requirement under the Madison Glaziers Agreement because any driving work they perform is under the Madison Glassworkers Agreement. I reject this claim. The absence of a similar provision in the Madison Glaziers Working Agreement does not invalidate the clear and unambiguous language contained therein that the driving of installation trucks is glazier work.

and unload his truck when he had to go from one jobsite to another.[16] The "Recognition and Jurisdiction" language of the Madison Glaziers Working Agreement, however, states that "Installation is defined as carrying materials from the truck to the opening and putting the material in place. Materials, however, may be delivered and placed in designated storage areas by Glassworker Union members." This language indicates the work at issue is glazier work, not Unit work, because the glaziers are unloading the materials from their trucks to install them at the jobsite. It is unclear from the record what these glaziers would be loading back into their truck, other than tools and supplies used in the installation. Regardless, there is nothing in the record indicating that such work is Unit work.

Overall, the record establishes the glaziers spend, on average, less than 10 percent of their work week performing Unit work (i.e., loading and unloading of the installation trucks at the Employer's facility, and the occasional cutting, drilling or other fabrication work at the Employer's facility). Such time is insufficient to qualify as dual-function employees.

Additionally, in order to be dual function, the employee must perform unit work for sufficient periods of time to demonstrate that he/she has a substantial interest in the unit's wages, hours and working conditions. See *Berea Publishing Co.*, *supra* at 518-519. The glassworkers and the glaziers have similar hours and some similar working conditions, but their wages and benefits are different, even when the glaziers are performing Unit work. No matter how much time the four journeyman glaziers spend performing Unit work, under both the Madison Glaziers Working Agreement and the Madison Glassworkers Agreement, the glaziers are paid the wages set forth in the Madison Glaziers Working Agreement, which, as described above, are

[16] Todd Ryan testified the glaziers frequently (approximately 70 percent of the time) will work on multiple jobsites on a given day, and that they spend time loading and unloading their trucks when they do so. He testified the time spent loading and unloading out at the jobsites (assuming there are multiple jobsites) varies, but he estimated that it generally is around five to 20 minutes each.

substantially higher than those paid to the glassworkers under the Madison Glassworkers Agreement. Conversely, the glaziers do not receive or become eligible to receive holiday pay, vacation pay, or personal days under the Madison Glassworkers Agreement when they perform Unit work. As such, absent a change to the language in the two agreements, the wages and benefits provided under the Madison Glassworkers Agreement will have no bearing on the glaziers, which undermines any argument that the glaziers would have a substantial interest in the Unit's wages, hours, and working conditions.[17]

Finally, I find the work the glaziers perform at the Employer's facility is incidental and occasional to the glaziers' primary duty of performing installation work out in the field. See *Strong Co.*, 87 NLRB 1360 (1949) and *Brown-Ely Co.*, 88 NLRB 577 (1950). In *Strong Co.*, the issue was whether seven operators were eligible to vote in the petitioned-for unit of "all mechanics, welders, and their helpers" because they helped mechanics in making repairs on their machinery and equipment. The Board found the operators to be ineligible, holding they only occasionally or infrequently assisted mechanics and welders during rush periods, and made

[17] The Union cites to the traditional community of interest factors and argues that there is common interchange, common day-to-day supervision, centralized control of labor relations, and similar skills and job duties. The Union then relies upon these factors to argue that "[t]he glaziers and glassworkers would form an appropriate unit, even if they use different skills to perform work, in addition to their differences in wages and benefits."

The Board applies the traditional community-of-interest analysis when delineating units of previously unrepresented employees, but not when it is assessing historical units with long periods of successful collective bargaining. See *Canal Carting, Inc.,* 339 NLRB 969 (2003); see also *Gold Kist, Inc.*, 309 NLRB 1 (1992). In cases of long-established bargaining relationships, such relationships will not be disturbed unless they are repugnant to the Act's policies, and the Board places a heavy evidentiary burden on a party attempting to show that historical units are repugnant. See *Ready Mix USA, Inc.*, 340 NLRB 946 (2003).

The Union and the Employer have maintained separate bargaining units, and negotiated separate agreements for at least the last 38 years. The employees in each unit vote on whether to ratify the agreement that applies to their unit, and do not vote on the agreement that applies to the other unit, even though they may perform cross-jurisdictional work. If the parties intended for employees to be covered under both agreements because they may occasionally perform cross-jurisdictional work, there would be no need for separate agreements, with separate recognition provisions, and no need for separate ratification procedures. There is no evidence the parties have sought to negotiate a single agreement covering both groups, or sought to modify or change the recognition or jurisdiction language under either agreement to encompass both groups. At the initial hearing, the Union conceded it is not arguing that the two separate units are repugnant under the Act. As such, I find there is no basis on which to conclude that these historically separate units should be treated as one unit.

minor repairs on their equipment, which was "incidental to their principal job of operating equipment." *Id.* In *Brown-Ely Co.*, the issue was whether three operator mechanics who normally performed their duties in the field were eligible to vote as part of the petitioned-for unit of shop mechanics. The argument raised for inclusion was that the operator mechanics: (1) made repairs to their equipment, occasionally with the assistance of the shop mechanics; and (2) spent a quarter of their work year performing assigned tasks in the shop. The Board acknowledged the operator mechanics performed such work, but held such work was incidental to their principal job of operating equipment. As such, the Board held the operator mechanics were ineligible to vote in the election. *Id.*

I believe the same reasoning applies to the facts in this case. As Ron Bambrough testified, having the glaziers perform the loading of the trucks ensures that they have all the tools, materials, and supplies they will need for the installation, and it avoids the need for glassworkers to make unnecessary trips out to the jobsites. As such, it is incidental to their primary duties.

IV. CONCLUSION

Based on the evidence in the record, and for the reasons set forth above, I conclude the four journeyman glaziers (Kevin Smith, Todd Ryan, Dale Belke, and Anthony Brendemihl) are not part of the Unit and, therefore, are ineligible to vote in the decertification election. I, therefore, direct an election for the eligible voters in the following unit:

> Those employees of the Employer working in the glass handling and fabrication departments, metal fabricators and assemblers, auto glass installers, and packing departments, all shop glazing, new and old sash, metal and plastic panels, shower doors, tub enclosures, insulated units, and truck drivers; excluding warehouse superintendents, janitors, watchmen, maintenance employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

Based on the foregoing, an election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Glaziers Local Union No. 941 of Painters & Allied Trades, District Council No. 7, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access

to the list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company,* 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer shall file with the undersigned, **two** copies of an election eligibility list, containing the **full** names (including first and last names) and addresses of all the eligible voters, and upon receipt, the undersigned shall make the list available to all parties to the election. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed, such list must be received in the Regional Office, 310 West Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53203 on or before July 9, 2008.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by July 16, 2008.**

OTHER ELECTRONIC FILINGS

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the

National Labor Relations Board web site at www.nlrb.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

Signed at Milwaukee, Wisconsin on July 2, 2008.

/s/Irving E. Gottschalk

Irving E. Gottschalk, Regional Director
National Labor Relations Board
Thirtieth Region
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Milwaukee, Wisconsin 53203